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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MIKE GLEASON, Chairman AZ CORP COMMISSION  
WILLIAM A. MUNDELL DOCKET CONTROL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION  
OF PERKINS MOUNTAIN WATER  
COMPANY FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
MOHAVE COUNTY

DOCKET NO. W-20380A-05-0490

IN THE MATTER OF THE APPLICATION  
OF PERKINS MOUNTAIN UTILITY  
COMPANY FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
MOHAVE COUNTY.

DOCKET NO. SW-20379A-05-0489

**CLOSING BRIEF OF PERKINS  
MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN  
UTILITY COMPANY**

**I. INTRODUCTION.**

Perkins Mountain Water Company ("PMWC") and Perkins Mountain Utility Company ("PMUC") (collectively the "Applicants"), through counsel undersigned, hereby submit their closing brief for the evidentiary hearing held May 5 and May 8, 2008, (the "May 2008 Hearing") in the above-captioned consolidated dockets. Subject to the recommendations that are set forth in the March 28, 2008, Amended Staff Report ("March 28 Staff Report") as modified by the April 28, 2008, Amendment to the March Staff Report ("April 28 Staff Report"), the evidence clearly supports a finding by the Arizona Corporation Commission ("Commission") that there is a public need and necessity for integrated water and wastewater service within the requested certificated areas and that the Applicants are each fit and proper to receive water and wastewater Certificates of Convenience and Necessity ("CC&Ns"). Further, all areas of

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1 disagreement between the Utilities Division ("Staff") and the Applicants have been  
2 resolved. Accordingly, the Commission should grant the requested CC&Ns for water  
3 and wastewater services subject to (i) the recommendations set forth in the March 28  
4 Staff Report, as modified by the April 28 Staff Report, and (ii) the additional agreements  
5 between the Applicants and Staff set forth on the record at the May 2008 Hearing, as  
6 summarized herein.

## 7 **II. PROCEDURAL HISTORY.**

8 On July 7, 2005, the Applicants filed their respective Applications (the "Initial  
9 Applications") to provide water and wastewater services to proposed master planned  
10 developments in Mohave County, Arizona, known as Golden Valley South (now known  
11 as Pravada) and The Villages at White Hills (collectively the "Projects"). At the time of  
12 the filing, and throughout the proceedings that followed in 2006 and 2007, the stock of  
13 the Applicants was owned by Rhodes Homes Arizona, L.L.C., the developer of the  
14 Projects (hereinafter referred to as the "Developer").<sup>1</sup>

15 On November 29, 2007, the Developer entered into a Stock Purchase and Utilities  
16 Services Agreement (the "Agreement") with Utilities, Inc. ("UI"), one of the largest  
17 water and wastewater providers in the United States, to transfer the stock of the  
18 Applicants from Developer to UI. UI and the Developer opted for a stock transfer as  
19 opposed to an asset transfer because the Applicants possessed no assets and a stock  
20 transfer was viewed as the most expeditious and cost-effective way for UI to acquire the  
21 Applicants and move forward with the Initial Applications. (Ex. CA-1 at 7, lines 22-25).  
22 Upon execution of the Agreement, UI became the new owner of the Applicants with sole  
23 control over the Applicants.

24 On November 30, 2007, the Applicants filed their Amendment to Applications  
25 and Request for Procedural Schedule (the "Amended Applications") to (i) notify the  
26 Commission of the change in ownership and control of the Applicants; (ii) provide

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27 <sup>1</sup> The procedural history in this matter is quite lengthy and is summarized in Applicants' Amendment to  
28 Applications and Request for Procedural Schedule filed November 30, 2007. (Ex. CA-2).

1 information regarding UI, the new owner of the Applicants; (iii) update financial and  
2 other data contained in the Initial Applications; and (iv) request necessary and  
3 appropriate modifications to certain of the recommendations contained in the December  
4 15, 2006, Addendum to Staff Report. After a procedural conference on January 4, 2008,  
5 the Administrative Law Judge ("ALJ") issued a Procedural Order dated January 8, 2008,  
6 which established various filing deadlines and set a hearing date. Pursuant to the  
7 Procedural Order, Staff filed its March 28 Staff Report, as modified by its April 28 Staff  
8 Report, recommending that the Amended Applications be approved with conditions.  
9 The May 2008 Hearing was conducted on May 5 and May 8, 2008.<sup>2</sup>

10 **III. THE APPLICANTS HAVE MET THE LEGAL REQUIREMENTS TO**  
11 **OBTAIN CC&NS.**

12 There are two questions the Commission must answer in the affirmative before  
13 granting a new CC&N. First, is there a demonstrated "need and necessity" for the  
14 proposed utility service? Second, is the applicant "fit and proper" to hold a CC&N?  
15 The considerable evidence in this case makes clear that the answer to both questions is  
16 yes.

17 **A. Need and Necessity.**

18 Golden Valley South is a master planned community comprising approximately  
19 nine square miles ( $\pm 5,800$  acres) located approximately five miles southwest of  
20 Kingman, Arizona. At build-out, Golden Valley South will contain up to 33,000  
21 residential dwelling units along with schools, recreational amenities and open space,  
22 industrial parks, business parks and other commercial areas. The Villages at White Hills  
23 comprises approximately four and one-half square miles ( $\pm 2,700$  acres) located  
24 approximately 40 miles northwest of Kingman. The Villages at White Hills will serve  
25 both residents and travelers, and will include up to 20,000 dwelling units at build-out.  
26 (Ex. CS-1 at 1).

27 <sup>2</sup> Because the Amended Applications stipulated to the entire evidentiary record in this proceeding (*see* Ex.  
28 CA-2 at 6, lines 6-7), the Applicants will cite herein to testimony that had previously been admitted into  
evidence at prior evidentiary hearings in this case.

1 From the beginning, the record in this case has been uncontroverted with respect  
2 to the need and necessity for water and wastewater services as detailed in the Initial  
3 Applications and the Amended Applications. Golden Valley South and The Villages at  
4 White Hills are both located in uncertificated and unincorporated areas of Mohave  
5 County, Arizona, where there is no water or wastewater service presently available.  
6 Both Projects are moving forward, with Golden Valley South proceeding ahead of The  
7 Villages at White Hills.

8 The Developer has now received both general plan approval as well as specific  
9 zoning for all of Golden Valley South. What remains to be approved are the individual  
10 plats for the various phases of development, and the Developer is currently working on  
11 the plats for the initial phases which will be filed some time in the summer of 2008.

12 Staff has recommended approval (with conditions) of the Initial Applications and  
13 the Amended Applications in each of the several Staff reports filed in this case,  
14 evidencing Staff's determination that a public need and necessity exists for water and  
15 wastewater services at Golden Valley South and The Villages at White Hills. Thus, the  
16 "need and necessity" prong of the two-prong analysis is satisfied in this case.

17 **B. Fit and Proper.**

18 There are several factors the Commission considers in evaluating whether an  
19 applicant for a CC&N is "fit and proper."<sup>3</sup> Chief among these factors are (i) whether the  
20 applicant possesses the technical expertise to operate a public utility; and (ii) whether the  
21 applicant has the financial wherewithal to properly capitalize, construct and operate a  
22 public utility. In addition to these factors—which may properly be described as  
23 threshold factors—the Commission considers whether the applicant is fit and proper to  
24 assume the public trust that accompanies the grant of a CC&N. In many if not all cases,

25  
26 <sup>3</sup> "In any CC&N proceeding, Staff is charged with reviewing the evidence submitted by an applicant to  
27 make a recommendation to the Commission as to whether the applicant is a fit and proper entity with the  
28 financial and technical capabilities to serve the public." *Staff Report* dated March 3, 2005, at 14 (Docket  
Nos. W-04264A-04-0438 [Woodruff Water Company], SW-04265A-04-0439 [Woodruff Utility  
Company] and W-01445A-04-0755 [Arizona Water Company] (consolidated)).

1 the Commission attaches conditions to the grant of a CC&N to ensure that the applicant  
2 is—and continues to be—fit and proper. In this case, Staff has rightly determined that  
3 the Applicants are fit and proper, and has recommended various conditions including,  
4 for example, that the Applicants provide irrevocable letters of credit or performance  
5 bonds totaling \$1 million due to their lack of prior operating experience.<sup>4</sup> As more fully  
6 discussed below, the evidence presented in this case clearly demonstrates that the  
7 Applicants are each fit and proper to receive and hold CC&Ns.

8 **1. Experience and Technical Expertise.**

9 The Applicants are wholly owned and will be operated by UI. Operating  
10 since 1965, UI is one of the largest privately-owned water and wastewater utilities in the  
11 United States. (CA-2 at 5). Applicants' witness John D. Williams testified that:

12 UI is a holding company for regulated utilities providing water and waste  
13 water service to approximately 311,000 customers through 90 operating  
14 subsidiary companies in 17 states. UI's revenue is split approximately in  
15 half between its water and waste water service. Overall, UI has  
16 approximately 535 employees. UI is an industry leader in providing reuse  
17 of reclaimed water at many of our facilities. Its customer base is primarily  
18 residential, representing approximately 92% of total utility revenue. UI is  
19 one of the largest investor-owned water utilities in the United States on the  
20 basis of customers served and investment in plant. UI is committed to  
21 providing safe, reliable, and cost-effective service to its customers. (CA-1  
22 at 4).

23 Of particular relevance in this case is the fact that UI owns and operates Bermuda  
24 Water Company ("Bermuda"), an Arizona utility which it acquired via a stock transfer in  
25 1999. Mr. Williams testified that:

26 Bermuda provides water service to approximately 7,900 customers south of  
27 Bullhead City in Mohave County, Arizona, and has approximately \$12  
28 million in gross plant. As indicated in the Staff Report, Bermuda had no  
Arizona Department of Environmental Quality deficiencies, and the system  
is currently delivering water that meets the water quality standards required  
by Arizona Administrative Code, Title 18, Chapter 4. (*Id.* at 6).

<sup>4</sup> The March 28 Staff Report stated that (1) although the Applicants themselves had no prior operating experience, their immediate parent, UI, did have such experience and already operated a water utility in the State of Arizona; and (2) the Applicants, through their parent UI, had adequate financial capability to provide the requested services. (Ex. CS-1 at 17).

1 Based upon UI's technical and operational experience in operating water and  
2 wastewater systems in Arizona and in numerous other jurisdictions, Applicants possess  
3 the requisite expertise and exposure to be considered fit and proper.

4 **2. Financial Wherewithal.**

5 The record is clear that the Applicants have the financial wherewithal to  
6 operate water and wastewater utilities in Arizona. Applicants are wholly owned and will  
7 be operated by UI. As stated in the March 28 Staff Report, following Staff's review of  
8 the financial information provided by the Applicants, Staff found that UI has substantial  
9 assets and net income and has adequate financial capability to provide the requested  
10 service. (Ex. CS-1 at 15). Moreover, UI's auditors issued an unqualified opinion on  
11 UI's financial statements. (*Id.*). Staff concluded that the Applicants, through their  
12 parent UI, "have adequate financial capability to provide the requested service." (*Id.* at  
13 17).

14 **3. Recommended Conditions.**

15 For the two Applications combined, Staff has recommended more than  
16 two dozen conditions in the March 28 Staff Report as modified by the April 28 Staff  
17 Report.<sup>5</sup> This includes, for example, the recommended condition that the Applicants  
18 provide irrevocable letters of credit or performance bonds totaling \$1 million to remain  
19 in effect until further order of the Commission. These conditions are designed to ensure  
20 that the Applicants are fit and proper to receive CC&Ns. The Applicants have agreed to  
21 comply with all of these conditions.

22 Based upon the foregoing, the evidence clearly demonstrates that Applicants are  
23 "fit and proper" to possess CC&Ns to provide integrated water and wastewater service  
24 to the Projects.

25  
26  
27  
28 <sup>5</sup> A number of the conditions are duplicative because there are two Applications.

1     **IV.     WATER ADEQUACY.**

2             The evidence presented in this case regarding the adequacy of the water supply  
3     for Golden Valley South and The Villages at White Hills is substantial and irrefutable.  
4     In the Arizona Department of Water Resource's ("ADWR") Analysis of Adequate Water  
5     Supply for Golden Valley South dated October 19, 2005, ADWR determined that 9,000  
6     acre-feet per year of groundwater will be physically available at build-out. In a  
7     subsequent Analysis of Adequate Water Supply dated August 14, 2006, ADWR  
8     determined that an additional 2,895.69 acre-feet per year of treated effluent will be  
9     physically available at build-out, for a total of 11,895.69 acre-feet. This amount is only  
10    300.42 acre-feet less than the 12,196.11 acre-feet of estimated demand for Golden  
11    Valley South at full build-out. (Analysis of Adequate Water Supply, October 19, 2005,  
12    Exhibit A-15; Analysis of Adequate Water Supply, August 14, 2006, Exhibit A-16).  
13    Accordingly, on May 11, 2007, the Applicants filed a Notice of Late-filed Legal  
14    Description which identified a 253.96 acre-foot parcel of land within Section 8,  
15    Township 20 North, Range 18 West portion of Golden Valley South for which  
16    Applicants are seeking an order preliminary. Applicants are requesting that they receive  
17    CC&Ns for the balance of Golden Valley South. Staff plotted the area subject to the  
18    requested order preliminary in a map filed on May 18, 2007. Staff has recommended  
19    approval of the issuance the order preliminary for this small portion of Golden Valley  
20    South.

21             With regard to The Villages at White Hills, the Applicants filed with the  
22    Amended Applications a copy of ADWR's Analysis of Adequate Water Supply dated  
23    July 18, 2007, finding that 11,922.00 acre-feet per year of groundwater and an additional  
24    2,607.81 acre-feet per year of treated effluent will be physically available at build out for  
25    a total of 14,529.81 acre-feet per year. This total amount is more than ADWR's  
26    estimated annual water demand of 12,651.03 acre-feet per year for the approximately  
27    26,000 single family and multi-family dwelling units. (Ex. CA-2 at 8 referencing Exhibit  
28

1 A attached thereto; Ex. CS-1 at 6). Accordingly, water adequacy for The Villages at  
2 White Hills at build-out has been clearly demonstrated.

3 **V. CONSERVATION MEASURES.**

4 The Applicants have stated on the record that they are committed to the sensible  
5 use of groundwater, as well as the beneficial reuse of all reclaimed wastewater within  
6 their proposed certificated areas. The uncontroverted evidence presented by Applicants  
7 outlines the numerous conservation measures that the Applicants and the Developer  
8 intend to implement at Golden Valley South and The Villages at White Hills. These  
9 measures are discussed in the following paragraphs.

10 **A. Direct Reuse of Effluent.**

11 PMUC's master wastewater plan calls for the direct reuse of treated effluent at  
12 Golden Valley South and the Villages at White Hills. (Tr. Vol. III at 461). The effluent  
13 will be delivered directly for use on the golf course in Golden Valley South, landscaped  
14 rights-of-way and common areas, and other turfed areas within the Projects, eliminating  
15 the need to use groundwater for irrigation of those areas. Moreover, the Developer will  
16 construct an effluent reuse system (the so-called purple pipes) which is sized to deliver  
17 100% of the build-out capacity of the wastewater treatment plants that will serve the  
18 Projects. (Tr. Vol. III at 535-36). This means that the direct reuse of effluent can be  
19 maximized, rather than relying on aquifer recharge or disposal by some other means.

20 The direct reuse of effluent in the way planned by the Applicants is uncommon in  
21 Arizona for at least two reasons. First, at the hearing held in 2007, Mr. Jones testified  
22 that "many wastewater systems have no reuse at all." (Tr. Vol. III at 594-95). While  
23 Mr. Jones noted that newer wastewater systems now often include reuse, he testified that  
24 "the predominance of wastewater systems still today have no reuse." (*Id.*). Second, Mr.  
25 Jones testified that of those wastewater systems which can deliver effluent for direct  
26 reuse, "most would be sized for the identified major turf facility uses and any effluent  
27 generated above that would ... either have to be recharged or otherwise disposed of."  
28



(Tr. Vol. III at 595). The effluent reuse systems that will supply Golden Valley South and The Villages at White Hills will maximize groundwater conservation because they will be constructed to deliver the entire output of the wastewater treatment plants for the Projects. In addition, the wastewater treatment plants will be designed to deliver "A+" effluent, the highest grade of effluent identified by the Arizona Department of Environmental Quality ("ADEQ"). (Tr. Vol. III at 464-65). Lesser grades of effluent have associated restrictions on usage. Thus, the treatment of effluent to the "A+" standard makes possible the fullest reuse of the effluent. (Tr. Vol. III at 463-64).

**B. Recharge of Excess Effluent When Necessary.**

The output of effluent from the two wastewater treatment plants and the demand for effluent within the Projects will not match exactly. In the hottest summer months, the demand for effluent will exceed the output from the wastewater treatment plants. In some winter months, the output from the plants may exceed the demand for effluent, especially during rainy periods. (Tr. Vol. III at 462). In order to accommodate these inevitable imbalances, PMUC must construct recharge facilities so that excess effluent can be recharged to the aquifer during winter months and recovered during summer months. (Tr. Vol. III at 462). Mr. Jones testified at the hearing held in 2007 that these recharge facilities must be permitted by ADWR and ADEQ. (Tr. Vol. III at 462-63).

**C. Best Management Practices.**

During the hearing in 2007, Mr. Jones testified that ADWR was considering adopting a best management practices program to address recognized deficiencies in its Total Gallons Per Capita Per Day ("GPCD") program which applies inside Arizona's active management areas ("AMAs"). (Tr. Vol. III at 467-468). PMWC had previously stated its willingness to consider voluntarily implementing certain best management practices for water conservation in its proposed certificated areas if the CC&N is approved, notwithstanding the fact that the certificated areas lie outside of an AMA. (Tr. Vol. III at 466).

1 During earlier hearing days in this case, PMWC and the Developer outlined a  
2 number of measures to be implemented that would further the objective of conservation  
3 of groundwater at Golden Valley South and The Villages at White Hills. Specifically,  
4 the Developer stated in testimony on the record that it intends to install low flow toilets,  
5 shower heads and faucets, as well as hot water recirculation systems. (Tr. Vol. IV at  
6 675-676). In addition, the Developer stated that it will require xeriscape landscaping in  
7 front yards and will limit turf in back yards. The Developer also intends to use effluent,  
8 once available, on the golf course at Golden Valley South and on landscaped rights-of-  
9 ways, common areas and turfed areas within the Projects. (Tr. Vol. III at 594). Further,  
10 irrigation systems for common area landscaping, rights-of-ways, turfed areas and the  
11 golf course will incorporate wind sensing and slope sensing technology to maximize the  
12 efficiency of the application of effluent. (Tr. Vol. IV at 677).

13 At the May 2008 Hearing, PMWC submitted an exhibit which memorialized the  
14 conservation measures that PMWC and the Developer have committed to implement at  
15 the Projects entitled "Commitments to Conservation and Comprehensive Water  
16 Management," a copy of which is attached hereto. (Ex. CA-5). Mr. Jones testified at the  
17 May 2008 Hearing regarding these conservation measures, which include:

- 18 (1) Full direct reuse of reclaimed wastewater, including the installation of a  
19 reclaimed wastewater distribution system in the initial phases of the  
20 Projects and a priority schedule for the reuse of effluent;
- 21 (2) Homebuilder installation of conservation measures in homes, including  
22 prohibition of turf in front yards and limitation of turf in back yards,  
23 installation of service pressure regulators, high-efficiency plumbing  
24 fixtures, prohibition of evaporative coolers, hot water re-circulating  
25 systems, and other measures;
- 26 (3) PMWC's voluntary implementation of certain best management practices  
27 defined in the Phoenix AMA non-per capita conservation program,  
28 including public awareness/public relations programs, conservation  
education and training programs, customer outreach services, and a  
condition of service which limits front yard landscaping to low water use  
trees, shrubs and groundcover, and prohibits turf; and
- (4) Other conservation measures, including a demonstration project on  
rainwater rooftop catchment, design of retention and recharge basins to

1 collect rainwater runoff, and design of retention and recharge basins within  
2 common areas and open space to maximize depression storage for  
3 recharge. (Tr. Vol. IX at 1636-1640).

4 Mr. Jones summarized the commitments of PMWC and the Developer to water  
5 conservation in the following way:

6 I believe this is a serious commitment to water conservation that is going to  
7 require the home builder to invest additional monies into products, home  
8 products that otherwise would not be required. I think it is a substantial  
9 investment in time, which equals money for the Perkins entities that are  
10 going to have to administer and implement these programs. So, yes, I  
11 believe it is a legitimate and substantial effort to bring meaningful water  
12 conservation efforts to these projects. (Tr. Vol. IX at 1678).

13 Finally, based upon discussions between the PMWC and Staff, on June 4, 2008,  
14 PMWC filed a revised schedule of service line and meter installation charges which  
15 provides for automatic meter reading ("AMR") technology meters in its certificated  
16 areas. The use of the more expensive AMR water meters by PMWC will increase the  
17 company's operational efficiencies and reduce its labor costs. PMWC is requesting that  
18 this revised tariff sheet be approved so that PMWC may utilize AMR water meters in its  
19 certificated areas.

20 In summary, the Applicants have demonstrated a serious commitment to water  
21 conservation and direct effluent reuse which will place them among the leaders in this  
22 regard in Arizona.

23 **D. Tiered Rate Design.**

24 PMWC proposed a three-tiered rate design in its Application, which has become  
25 the standard conservation-oriented rate design requested and approved by the  
26 Commission. (Tr. Vol. III at 465). Mr. Jones testified at hearing in 2007 that the rate  
27 design he developed was structured to "match the Staff model rate design for a utility."  
28 (Tr. Vol. III at 465). Mr. Jones further testified, on behalf of PMWC, that "tiered rate  
designs are an important part of the conservation equation and that they are effective."  
(Tr. Vol. III at 465).

1 **VI. MISCELLANEOUS ISSUES.**

2 **A. Inclusion of the Sports Entertainment Property in an Order**  
3 **Preliminary.**

4 The March 28 Staff Report states that intervenor Sports Entertainment had  
5 requested that its property (the "Sports Entertainment Property") be included in  
6 Applicants' CC&N for The Villages at White Hills and that Applicants file an amended  
7 legal description to include the Sports Entertainment Property. Applicants and Staff  
8 subsequently agreed that the Sports Entertainment Property should be included in the  
9 CC&N subject to an order preliminary. On April 25, 2008, Applicants filed a  
10 Supplement to the Amended Applications that contained an amended legal description  
11 for the CC&Ns to include the Sports Entertainment Property, subject to an order  
12 preliminary. In its April 28 Staff Report, Staff recommended inclusion of the Sports  
13 Entertainment Property in the CC&Ns subject to an order preliminary. Staff also  
14 recommended three additional conditions, and the Applicants have agreed to each of  
15 these conditions. (See Ex. CS-2 at 2-3).

16 **B. Phasing of CC&N.**

17 At the May 2008 Hearing, Commissioner Hatch-Miller inquired whether it would  
18 be appropriate for CC&Ns to be issued to the Applicants in phases, given the large size  
19 of the Projects. (Tr. Vol. VIII at 1520). Mr. Jones testified that a phasing of the CC&Ns  
20 would not be appropriate for these particular Projects, although phasing may be  
21 appropriate for other developments under other circumstances. Mr. Jones testified that  
22 unlike other developments (such as Bellmont in Northwest Maricopa County, for  
23 example, or projects with non-contiguous blocks of land such as the Double Diamond  
24 development in Mohave County), a phasing of these Projects would place the Applicants  
25 at significant risk. In this case (unlike other large developments), the Developer has  
26 received final zoning approval from Mohave County for all of Golden Valley South.  
27 Now, all that is required for the Developer to proceed with development of Golden  
28 Valley South is to submit phase-specific plats which conform to the approved zoning,

1 and, of course, the certification of water and wastewater providers for the Project.  
2 Because Golden Valley South was zoned in its entirety, the water and wastewater  
3 infrastructure will be planned, sized and constructed to satisfy the service requirements  
4 of the Project at full build-out. Neither a prudent developer nor a prudent utility would  
5 make hard investments in utility infrastructure for future phases without the assurance  
6 that the CC&N is in place to cover those phases. Otherwise, there is the material risk of  
7 stranded investment. (Tr. Vol. IX at 1,680-1,689).

8 Mr. Jones testified that another risk of phasing CC&Ns in master-planned  
9 developments such as Golden Valley South and The Villages at White Hills is the fact  
10 that water and wastewater infrastructure necessary to serve the initial phases of the  
11 Projects will be located on lands that will be developed as later phases of the Projects.  
12 Phasing of the CC&Ns in this case would create a situation where wells, storage tanks  
13 and wastewater treatment plants are located outside of the initial CC&Ns, or water lines  
14 and sewer collection lines would cross lands that are not included in the initial CC&Ns.  
15 (*Id.*).

16 Yet another problem with phasing the CC&Ns in these Projects, as identified by  
17 Mr. Jones, is the fact that the Applicants will be making refunds intended to build equity  
18 to the levels recommended by Staff based on revenue and cost projections for the  
19 Projects at full build-out. Moreover, the Applicants will be building the required equity  
20 while carrying negative cash flow in the first three years of operations with the certainly  
21 that they will have the CC&N and future customers to justify the equity investment.  
22 (*Id.*). A phasing of the CC&Ns eliminates the certainty of future customers to provide  
23 revenue and to spread costs.

24 For all of these reasons, a phasing of the CC&Ns for Golden Valley South and  
25 The Villages at White Hills would impose inappropriate risk on the Applicants.  
26  
27  
28

1           **C.     Corporate Structure**

2           The Applicants are 100% owned by UI, which is a holding company for the stock  
3 of 90 operating utilities throughout the United States. UI is ultimately owned by three  
4 AIG Highstar Capital private equity funds and American General Life Insurance  
5 Company. (Ex. CS-1; Tr. Vol. VIII at 1449).<sup>6</sup> Because UI is a holding company, all UI  
6 employees and those of its many subsidiaries (including Bermuda) are employees of  
7 UI's wholly-owned subsidiary, Water Service Corporation ("WSC"). WSC is an  
8 administrative company that provides labor and other resources to the utilities to take  
9 advantage of economies of scale and savings by consolidating accounting, regulatory,  
10 payroll and other administrative functions. (Tr. Vol. VIII at 1560). WSC provides these  
11 services pursuant to contracts between WSC and the various utilities with no mark-ups  
12 of the services that it provides. (*Id.*) Although Applicants' employees will be employed  
13 by WSC, they will be specifically assigned to the Applicants. (*Id.* at 1448, 1560, 1568-  
14 1570).

15           **D.     Stock Transfer Condition.**

16           As set forth in the Amended Applications, and as supported by the affidavits  
17 attached thereto from Messrs. James Rhodes and John Hoy, Chief Regulatory Officer of  
18 UI, neither Mr. Rhodes nor any of his affiliated entities have any ownership interest in  
19 UI. (Ex. CA-2 at 4-5). The March 28 Staff Report contains a condition that Applicants  
20 must notify the Commission of any proposed change in the ownership of the Applicants  
21 at least 30 days prior to the change in ownership. The Applicants agreed to that  
22 condition. Further, the Applicants agreed through legal counsel at the May 2008  
23 Hearing that UI would not transfer the stock of the Applicants to James Rhodes or any  
24 entity affiliated with James Rhodes without prior Commission approval. (Tr. Vol. VIII  
25 at 1575-1577).

26  
27 <sup>6</sup> UI's board of directors is comprised of five directors. One director is an employee of UI's subsidiary,  
28 Water Service Corporation. The others are employed by AIG Global Investment Corporation, an indirect  
subsidiary of AIG.

1           **E.     Capital Structure**

2           The March 2008 Staff Report initially recommended that the Applicants be  
3 required to finance at least 50% of their respective plant with equity by the end of the  
4 fifth year of operations, which was the same recommendation that Staff had made when  
5 the Applicants were developer-owned entities. (Ex. CS-1 at 9). In their pre-filed direct  
6 testimony, Messrs. Williams and Jones each opposed this Staff recommendation as it  
7 would have unnecessarily shifted risk from the Developer to the Applicants. Mr. Jones  
8 testified that:

9           Due to the acquisition of the Perkins Companies by Utilities, Inc., their  
10 situation has changed since the original Staff recommendation in December  
11 2006. They are no longer new utilities without operating experience.  
12 Rather, they are part of Utilities, Inc., a well capitalized group of investor-  
13 owned companies, with significant operating experience throughout the  
14 country and here in Arizona. Utilities, Inc., proposes to make a very  
15 significant equity investment of \$4,300 per Unit in the Perkins Companies.  
16 This investment is estimated to total \$12.4 million by Year-5 and  
17 approximately \$140 million by Year-20. This high level of investment  
18 results in a significant rate base that will allow the Perkins Companies to  
19 meet operating expense obligations and fund capital improvements without  
20 placing undue upward pressure on customer rates. It is certainly sufficient  
21 to insure that the Perkins Companies will have a vested interest in installing  
22 quality plant and properly maintaining the plant once installed. (Ex. CA-3  
23 at 11).

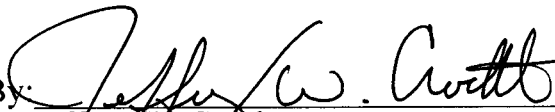
24           Following Staff's review of the Applicants' pre-filed testimony, and after meeting  
25 with the Applicants, Staff revised its recommendations in the April 2008 Staff Report to  
26 require that Applicants achieve a capital structure to consist of no debt, 40% equity and  
27 no more than 60% advances in aid of construction/contributions in aid of construction.  
28 Staff further recommended that the CC&N be conditional upon the Applicants'  
agreement to file applications for rate increases no earlier than such time as the  
Applicants have obtained the recommended capital structure. (Ex. CS-2 at 2). At the  
May 2008 Hearing, Applicants agreed to comply with this recommended condition. (Tr.  
Vol. VIII at 1407).

1 **VII. CONCLUSION.**

2 The evidentiary record in this docket fully supports the Commission's issuance of  
3 CC&Ns to the Applicants from both a legal and public policy perspective. The  
4 Applicants have demonstrated, and Staff has agreed, that there is a public need and  
5 necessity for water and wastewater utility services at Golden Valley South and The  
6 Villages at White Hills, and that the Applicants are fit and proper. To the extent the  
7 Commission may have had any concerns regarding the issuance of CC&Ns to what were  
8 initially start-up, developer-owned utilities, the subsequent transfer of ownership and  
9 control of Applicants to UI, as well as UI's proposed operation of the Applicants, should  
10 alleviate such concerns. Moreover, the requirement for the Applicants to procure  
11 performance bonds and/or letters of credit totaling \$1 million will further ensure that  
12 ratepayers are adequately protected and that the public interest is served. For all of the  
13 reasons set forth herein, Applicants respectfully request that the Applications be  
14 approved consistent with the recommendations set forth in the March 2008 Staff Report  
15 as modified by the April 2008 Staff Report.

16 RESPECTFULLY SUBMITTED this 9th day of June, 2008.

17 SNELL & WILMER L.L.P.

18  
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24 ORIGINAL and 15 copies filed this  
25 9th day of June, 2008, with:

26 Docket Control  
Arizona Corporation Commission  
27 1200 West Washington  
Phoenix, Arizona 85007  
28



1 COPY of the foregoing hand-delivered  
2 this 9th day of June, 2008, to:  
3 Dwight Nodes, Assistant Chief Administrative Law Judge  
4 Hearing Division  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 Robin Mitchell, Staff Attorney  
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10 Arizona Corporation Commission  
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13 Steve Olea, Assistant Director  
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18 COPY of the foregoing mailed this  
19 9th day of June, 2008, to:

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**Commitments to Conservation and Comprehensive Water Management**

**Perkins Mountain Water Company**

**(Docket No. W-20380A-05-0490)**

**Rhodes Homes Arizona**

**May 8, 2008**

**1) Full use of reclaimed water.**

- a) Reclaimed water distribution system to be installed beginning with Phase I.
  - i) Initial system will provide build-out reclaimed water capacity.
  - ii) Initial system to be backbone system in arterial roadways necessary to provide service to common areas, the golf course, parks, schools and commercial.
- b) Reclaimed water to be used in the following priority order:
  - i) Priority 1 - Filling and refilling of reclaimed water storage retention structures for irrigation of turf and other landscaping in common areas, the golf course, parks, schools and similar areas.
  - ii) Priority 2 - irrigation of commercial landscaping and similar exterior water uses.
  - iii) Priority 3 - Irrigation of residential landscaping and similar exterior water uses.
- c) Reclaimed water system to be extended to individual residential lots in future phases of development as Priority 3 reclaimed water becomes available.

**2) Homebuilder installation of conservation measures in homes.**

- a) Landscape Design.
  - i) Front Yard. Front yards landscaped with low water use trees, shrubs and groundcovers. No turf allowed.
  - ii) Back Yard. Turf comprises less than 50% of total landscapable area of backyard, not to exceed 900 square feet on average.
- b) Plumbing Standards.
  - i) Indoor and outdoor service pressure regulated to a maximum of 60 psi.
  - ii) High-efficiency fixtures (1.6 gallon flush toilets, 2.2 GPM kitchen faucets, 1.5 GPM bathroom faucets, 2.5 GPM shower heads).
  - iii) No evaporative coolers.
  - iv) Hot water recirculating system, manifold system or design capable of hot water delivery with <0.5 gal.
  - v) High efficiency dishwasher (6.5 gallon or less per normal cycle).
  - vi) Water softener capable of using potassium instead of sodium and demand-based regeneration.
  - vii) Supplemental drinking water systems have a beneficial yield of 85% or higher.

**\*\* The items in this Section 2 will be included as a condition of service in the master water agreement between Perkins Mountain Water Company and Rhodes Homes Arizona.**

CA-5

**Perkins Mountain Water Company  
Rhodes Homes Arizona  
Commitments to Conservation and Comprehensive Water Management  
May 8, 2008**

**3) Voluntary Implementation of Phoenix AMA non-per capita conservation program.**

- a) Public Education Program.
- b) Additional Conservation Measures (Best Management Practices).
  - i) Public Awareness/Public Relations.
    - (1) Special Events/Programs and Community Presentations.
  - ii) Conservation Education and Training.
    - (2) Youth Conservation Education Program.
    - (3) Homeowner Landscape Information.
  - iii) Outreach Services.
    - (4) Customer High Water Use Inquiry Resolution.
    - (5) Water Waste Investigations and Information.
  - iv) Condition of Service.
    - (6) Front yards landscaped with low water use trees, shrubs and groundcovers. No turf allowed.

**4) Other Conservation Measures.**

- a) Demonstration project on rainwater rooftop catchment.
- b) Design of retention and recharge basins to collect rainwater runoff.
- c) Design of retention and recharge basins within common areas and open space to maximize depression storage for recharge.

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